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## Decision

**Matter of:** Johnson Controls World Services, Inc.

**File:** B-288636; B-288636.2

**Date:** November 23, 2001

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Stuart B. Nibley, Esq., Joseph J. Dyer, Esq., and Robert F. Pezzimenti, Esq., Seyfarth Shaw, for the protester.

Raymond M. Saunders, Esq., Maj. Howard Roth, and Capt. Ryan M. Zipf, Department of the Army, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76 and alleging that the supporting management study failed to directly compare all of the positions identified in the agency's "most efficient organization" with the labor force at the start of the study is denied, since there is no legal requirement for such a detailed, "position-by-position" comparison.

2. Protest challenging agency decision to retain in-house logistics and public works functions as a result of a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76 and alleging that agency improperly failed to include costs for all of the personnel required to meet the requirements of the performance work statement (PWS), is denied, where the record provides no basis to question the reasonableness of the agency's finding that the government's "most efficient organization" had identified and costed all positions necessary to meet PWS requirements.

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### DECISION

Johnson Controls World Services, Inc. (JCWSI) protests the decision of the Department of the Army to retain logistics and public works functions at Fort Jackson, South Carolina in-house, rather than to contract for these services under request for proposals (RFP) No. DABT60-99-R-0015. The Army decided to retain the services in-house based on the results of a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76, which compared JCWSI's proposal to perform the work against the government's in-house management plan.

JCWSI challenges various aspects of the agency's administrative appeals board (AAB) decision. Although the AAB agreed with JCWSI on some of the appeal issues and directed that the in-house estimate be adjusted, the new cost comparison did not change the agency's initial determination to retain the services in-house. JCWSI primarily argues that the Army's in-house management plan for a "most efficient organization" (MEO) failed to reasonably explain reductions in staffing, and that the Army's in-house estimate does not include costs for all of the personnel in the MEO.

We deny the protest.

## I. BACKGROUND

In 1997, the U.S. Army Training and Doctrine Command (TRADOC) awarded a contract to Management Analysis, Inc. (MAI) to conduct a study of public works and logistics functions at 12 TRADOC installations, including Fort Jackson. For each installation, MAI was to develop a performance work statement (PWS), document the results of its study, provide a quality assurance surveillance plan, and include an independent government cost estimate based on a proposed MEO. (The protester does not challenge the multiple roles played by MAI.) As written, the PWS categorized the work to be performed under several maintenance and service areas, including: buildings and structures, utility systems operation, heating, ventilation, and air conditioning systems operation, dining facility equipment, grounds, surfaced area, range, materiel, transportation services, and base supply. Agency Report (AR) exh. J, PWS, at 1-2.

The document prepared for Fort Jackson consisted of five chapters. AR exh. M. The first four chapters were MAI products and included an introduction explaining the overall purpose of the study, scope, and methodology (ch. 1); a general description of Fort Jackson's operations as of the start of the study (ch. 2); MAI's analysis and recommendations (ch. 3); and MAI's proposed MEO (ch. 4).

Chapter 5 was prepared by Fort Jackson staff, hereinafter referred to as the MEO team. After MAI completed its work, the MEO team analyzed the recommendations and required functions. During this process, the MEO team met with all of the section supervisors and key staff to discuss staffing levels and possibilities for reductions or required additions, and asked supervisors to suggest improvements and reorganizations to increase efficiency. AR exh. T, Program Manager Statement, Sept. 19, 2001, at 1. In chapter 5, the MEO team commented on MAI's recommendations and reorganized MAI's proposed MEO by functional areas to reflect changes that had taken place at Fort Jackson, or were proposed to take place, since MAI completed its work. AR exh. M at 5-1. That section explained that "[t]he workload analysis performed by MAI is the basis for the additional changes taken by [the MEO team] and includes those actions necessary to execute [fiscal year 2000] reductions while meeting the requirements of the PWS." *Id.* The changes that the MEO team made to MAI's recommendations included consolidating some of the

work and eliminating positions. The final in-house management plan for an MEO prepared by the MEO team formed the basis for developing the estimate for the cost comparison at issue here.

TRADOC issued the RFP on February 22, 2000, as part of a public/private cost comparison under Circular A-76.<sup>1</sup> The RFP contained historical workload data for each functional area in the PWS. RFP § C.1.1.4.3. The RFP contemplated the award (if the private sector won the cost comparison) of a cost-plus-award-fee contract for a base year, with up to four 1-year options, and phase-in/phase-out transition periods. RFP §§ B, L.9.

Section M of the RFP listed staffing and key personnel, past performance/experience, technical capability, management approach, and subcontracting as evaluation factors. RFP § M.3. Rather than numerically rating or ranking the private-sector proposals, the RFP stated that individual members of a source selection evaluation board (SSEB) would assign adjectival ratings to each proposal as either “technically acceptable,” “marginal,” or “unacceptable” under each evaluation factor. The SSEB would then assign an overall consensus rating for each proposal. The source selection authority (SSA) would then select the technically acceptable private-sector offer with the lowest cost for the cost comparison with the MEO. Id.

The SSEB evaluated technical proposals the agency received from the private-sector offerors, and based on those initial evaluations, the Army conducted discussions only with JCWSI and one other offeror. The SSEB reevaluated those two firms’

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<sup>1</sup> The procedures for determining whether the government should perform an activity in-house or by a contractor are set forth in Circular A-76 and the Revised Supplemental Handbook (RSH) to it, which have been made expressly applicable to the Department of Defense (DOD) and its military departments. See 32 C.F.R. § 169a.15(d) (2001). The process set out in the Circular and the RSH broadly encompasses the following steps in conducting the public/private competition. First, after the PWS has been drafted, the agency ensures, through certification by an independent reviewing official (IRO), that the government’s in-house plan satisfies the requirements of the PWS. See RSH, part I, ch. 3, ¶ I. Second, there is a competition among private-sector offerors, which is conducted much as any competed federal procurement. Third, if that competition is done on the basis of a comparative technical evaluation (that is, if a cost/technical tradeoff is contemplated), the government’s in-house plan is compared with the winning private-sector offer to assess whether or not they are based on a comparable level of performance and performance quality--and if not, to make all changes necessary to make the level of the in-house plan comparable to that of the private-sector proposal. Id. ¶ H.3.d.e. Finally, once the playing field is thus leveled, there is a cost comparison between the private-sector offer and the in-house plan. Id. ¶¶ H, J.

revised proposals, which resulted in JCWSI's being the lowest-cost, technically acceptable one. Consequently, the SSA selected JCWSI's proposal for the cost comparison.

The U.S. Army Audit Agency (USAAA) was the independent reviewer (that is, the IRO) of the government's in-house plan. See Circular A-76, ch. 3, ¶ I; Army Regulation (AR) 5-20 § IV.4-14(a) (1997). In that capacity, the USAAA reviewed the management plan and supporting documentation, including the PWS and the cost comparison form. AR exh. V, USAAA Memorandum, Sept. 5, 2001. As part of its review, the USAAA interviewed Fort Jackson representatives, evaluated the methodology and rationale for efficiencies, and reviewed the management plan for consistency with the PWS. Based on its review, the USAAA certified that the management plan reasonably established the government's ability to perform the PWS's requirements with the staffing levels identified in the MEO. Id. at 2.

By letter dated November 17, 2000, TRADOC notified JCWSI that its proposal had been selected for comparison with the in-house cost estimate. By separate letter on that same date, TRADOC notified JCWSI that based on the results of the cost comparison, the agency had tentatively decided to retain the services in-house. In that letter, the Army also notified JCWSI that it would make available for public review the cost comparison form and supporting documents, including the management study. Id.

After reviewing the cost comparison and supporting documents, in a December 27 letter, JCWSI appealed the Army's tentative decision to retain the services in-house. AR exh. N. In addition to challenging several cost issues, JCWSI generally complained that the materials TRADOC made available for public review were confusing, and that the in-house cost estimate failed to include all of the staff required by the MEO. After JCWSI filed that appeal, the Army informed JCWSI that the decision to retain the services in-house was not based on the materials it had provided for public review, but on revisions made to those materials. The Army subsequently provided JCWSI with corrected documents and extended the time for public review and for filing an appeal.

On February 28, 2001, JCWSI filed a new appeal of the cost comparison based on the revised management plan and accompanying documents. In its appeal, JCWSI raised some new issues and many of the same issues it had raised in its previous appeal. In its decision, the AAB agreed with some aspects of JCWSI's appeal, and directed the contracting officer to revise the MEO, correct errors in the cost comparison form, and recalculate the in-house cost estimate accordingly.<sup>2</sup> The USAAA audited and

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<sup>2</sup> The RSH provides that the AAB should generally issue its decision within 30 days of the filing of a cost appeal. RSH part II, ch. 3, § K.8; see also AR 5-20, § IV.4-16. Here, the AAB issued its decision on August 3, 2001. While the AAB's delay in issuing the  
(continued...)

certified the revised cost estimate. See AR 5-20 § III, ¶ 4-13, and § IV, ¶ 4-14; RSH part I, ch. 3, §§ E.3, I.

The following table shows the result of the cost comparison based on the revised MEO:

	MEO	JCWSI
Proposed Costs	\$63,653,324	\$54,325,039
Contract Admin.	0	2,607,516
One-time Conversion Costs	0	1,976,135
Federal Income Tax	0	<271,626>
Total Adjusted Costs	63,653,324	58,637,064
Conversion Differential	0	5,631,518
Final Adjusted Costs	\$63,653,324	\$64,268,582

AR exh. P, Cost Comparison Form (July 16, 2001), at 1.

Although this cost comparison shows a savings of \$5,016,260 in favor of contracting, these savings did not exceed the minimum conversion differential of \$5,631,518.<sup>3</sup> Thus, the new cost comparison did not change the agency's initial decision to retain the work in-house. AR exh. Q, AAB Response to JCWSI's Appeal, Aug. 3, 2001, at 1-2. The agency subsequently provided JCWSI with a copy of the AAB's decision and the revised cost comparison form. This protest followed.

## II. PROTESTER'S CONTENTIONS

We segregate the protester's numerous allegations into two distinct, but related categories for purposes of this decision. One line of argument relates to JCWSI's general challenge to the agency's methodology for preparing the MEO and the alleged failure of the MEO to justify staffing reductions from the level of Fort Jackson's current operations. With respect to this challenge, the protester contends

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decision did not prevent JCWSI from pursuing this protest, we note that this delay—more than 7 months after JCWSI filed its initial appeal, and more than 5 months after JCWSI filed its second appeal—was well beyond the period contemplated by the RSH and the Army's own guidance.

<sup>3</sup> To ensure that the government does not convert between sectors for only marginal estimated savings, the RSH provides that services should not be converted from in-house performance to contract (or vice-versa) unless the cost savings exceed a minimum conversion differential. RSH, Part II, ch. 4, § A.1. That differential is the lesser of \$10 million or 10 percent of the personnel costs of providing the required services in the sector currently performing (here, in-house).

that the agency's allegedly flawed methodology caused a series of errors, resulting in unexplained staffing reductions in the MEO.

The second group of contentions in the protest concerns the in-house cost estimate's alleged failure to include costs for all of the required personnel. In this regard, JCWSI argues that costs for specific functions required by the PWS are not included in the in-house cost estimate. The protester also argues that the MEO overestimates savings from proposed operation improvements, and that the MEO failed to satisfy various requirements in the PWS.<sup>4</sup>

### III. ANALYSIS

Where, as here, an agency has conducted a cost comparison under Circular A-76, thus using the procurement system to determine whether to contract out or to perform work in-house, our Office will consider a protest alleging that the agency has not complied with the applicable procedures in its selection process or has conducted an evaluation that is inconsistent with the solicitation criteria or is otherwise unreasonable. See Trajen, Inc., B-284310, B-284310.2, Mar. 28, 2000, 2000 CPD ¶ 61 at 3. To succeed in its protest, the protester must demonstrate not only that the agency failed to follow established procedures, but also that its failure could have materially affected the outcome of the cost comparison. Aberdeen Technical Servs., B-283727.2, Feb. 22, 2000, 2000 CPD ¶ 46 at 5. We have reviewed the voluminous record developed in this matter, and we conducted a hearing to obtain testimony concerning specific issues. Based on our review of the entire record, including the parties' extensive submissions, we find no basis to question the reasonableness of the agency's decision to retain the services in-house.

#### A. Justification for Staffing Reductions

The protester focuses its protest on whether the MEO provided an adequate rationale for staffing reductions from the level of Fort Jackson's operations at the beginning of the study. The protester asserts that MAI described Fort Jackson's operations as consisting of 379 authorized positions at the beginning of the study. Based on that figure, MAI then recommended various staffing reductions and organizational changes which, according to JCWSI's calculations, resulted in MAI recommending a total of 301.5 full-time equivalents (FTE). JCWSI maintains, however, that the final MEO does not provide any justification for eliminating a

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<sup>4</sup> In its protest, JCWSI also argued that the MEO failed to meet certain PWS requirements related to cyclic maintenance and processing local procurements. JCWSI also argued that TRADOC's revised cost comparison failed to reflect the AAB's decision. The agency responded to the protester's allegations with respect to each of these points, and JCWSI did not pursue these issues in its comments. Accordingly, we deem these issues abandoned and do not discuss them further.

significant number of positions from the initial 379 FTEs. The protester contends that the agency's methodology, which it characterizes as a "top-down" approach (i.e., performed by taking reductions from the initial 379 FTEs), was defective and caused several material errors.

In our view, the protester's focus is fundamentally flawed. Our Office's review, in considering a private-sector offeror's challenge to the conduct of a public/private competition, addresses whether the agency reasonably found that the in-house plan satisfies the PWS requirements and whether the public/private competition was conducted on a level playing field. See, e.g., BAE Sys., B-287189, B-287189.2, May 14, 2001, 2001 CPD ¶ 86 at 19; Aberdeen Technical Servs., supra, at 8. The protester here would have us find, instead, that, in order to pass muster in a bid protest, an agency conducting a cost comparison pursuant to Circular A-76 is required to specifically identify each position under study prior to taking into account efficiencies, and to compare that labor force to the MEO in order to support staff reductions. We do not believe that the protester's approach is legally required.

It is true that the RSH requires that the in-house management plan for an MEO explain and document the assumptions that an agency relies upon in developing the MEO and in-house cost estimate, including "[a]n overall comparison of the current organization with the MEO and a review of any special initiatives or assumptions, including equipment or productivity changes." RSH, part I, ch. 3, § E.4. Rather than the detailed position-by-position comparison the protester maintains is required, however, the RSH thus provides that the MEO is to include "an overall comparison" with the current operation, and that the MEO is to "reflect the scope of the PWS." Id. The RSH further provides that the management plan "should identify the organizational structures, staffing, and operating procedures, equipment, transition and inspection plans necessary to ensure that the in-house activity is performed in an efficient and cost effective manner." Id. § E.1. The RSH thus simply requires that in forming the MEO, agencies determine what positions will be needed to perform the work reflected in the PWS. As the protester itself states, "This is required to ensure that the public-private competition will be conducted on an 'apples-to-apples' basis, since it is the PWS from which the contractor must work in preparing its proposal." Protester's Comments, Oct. 5, 2001 at 21-22. The focus of our Office's review is generally to determine whether there is a reasonable basis for the IRO's certification that the in-house plan for an MEO is capable of performing the PWS requirements with the level of staffing proposed, not whether there is a precise "cross-walk" from the staffing levels existing prior to the study or whether the reductions from those staffing levels were justified (even though we recognize that these latter questions may be important for the agency internally and may in some circumstances be relevant to the question of the reasonableness of the IRO's certification).

While our review focuses on the reasonableness of the agency's certification of the MEO's compliance with the PWS requirements, we recognize that the agency and the AAB did, in fact, devote considerable effort to tracking positions and intervening changes in Fort Jackson's operations. Thus, the Army argues that the protester fails to take into account modifications the MEO team made to MAI's recommendations<sup>5</sup> as reflected in chapter 5 of the management plan, as well as significant staff reductions as a result of organizational changes that occurred at Fort Jackson before MAI completed its work, but unrelated to the study.<sup>6</sup> The most notable of these changes included consolidation of the Directorate of Logistics and Directorate of Public Works to form the current Department of Logistics and Engineering (DLE), and combining the logistics supply and functions into one division. It is undisputed that this was a major reorganization affecting several areas under study. According to TRADOC, the new consolidated organization, DLE, provided improvements in the area of customer service and led to identifying other areas that could be restructured to achieve increased efficiencies, resulting in the final MEO.

In addition, during consideration of JCWSI's appeal, the AAB requested that the MEO team provide additional information in order to better understand and respond to JCWSI's appeal issues. AR exh. O, AAB Memo., Apr. 13, 2001, at 1-2. In response, the

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<sup>5</sup> While we view the dispute as having little relevance to the outcome of this protest, we note that the protester and the agency disagree on the number of FTEs that were in MAI's initial recommended MEO. The agency states that the 301.5 FTE figure that JCWSI relies on as MAI's recommendation is an inaccurate figure. TRADOC explains that JCWSI arrived at that number by starting with 265.5 FTEs recommended by MAI, subtracting (correctly, in the agency's view) 10.1 FTEs because they are "government-in-nature" positions, and adding (incorrectly) 46.1 FTEs of intermittent hours for one facility. The agency explains (as addressed further in the "clothing initial issue point" discussion below), that the intermittent hours should not be added (doing so would lead to double counting). The agency states that using correct calculations would delete the added 46.1 FTEs and thus lead to the conclusion that MAI recommended an initial MEO consisting of 254.9 FTEs. (This 254.9 FTE figure seems to have resulted from a small calculation error ( $265.5 - 10.1 = 255.4$ ).) We have no basis to question the agency's position in this regard.

<sup>6</sup> The agency states that the net result of the review performed by the MEO team was a reduction of 3.92 FTEs from the figure recommended by MAI, yielding a total of 250.98 FTEs ( $254.9 - 3.92 = 250.98$ ). DLE Crosswalks; AR exh. T at 1-2. The 250.98 FTE figure was then used as the basis for the initial cost comparison—*i.e.*, before adjustments were made as a result of JCWSI's appeal. (In addition to directing that other cost adjustments be made to the MEO, the AAB directed Fort Jackson to add 5 FTEs to the in-house cost estimate. AR exh. O, AAB Decision, Aug. 7, 2001. After implementing the AAB's decision, the MEO staffing thus increased to 255.98 FTEs. AR exh. P, Personnel Costs Worksheet, Aug. 8, 2000.)



MEO team provided detailed explanations for MAI's recommended MEO and for the changes that resulted in the final MEO. The MEO team described the history of various functions and provided reasons for the final proposed MEO. Also, in response to the AAB's request for a "visible audit" from the initial number of FTEs referenced in the management plan to the final MEO, the MEO team provided spreadsheets attempting to track all of the changes from the initial number of 379 FTEs MAI described, to the 250.98 FTEs identified by the MEO team.<sup>7</sup> AR exh. N1.3b App. A.

In this protest, JCWSI devotes considerable effort to pointing out numerous discrepancies, calculation errors, and omissions between the initial 379 FTEs MAI described and the 250.98 FTEs the MEO team identified in the final MEO.<sup>8</sup> In doing so, the protester identifies several documents which it believes existed prior to April 13, 2001, when the AAB requested the additional information from the MEO team, and compares them to other documents JCWSI states were created in response to the AAB's request for additional information. The protester then points to a series of apparent inconsistencies across and within those two sets of documents, to argue that TRADOC has not provided an auditable trail tracking staff reductions from the initial 379 authorized positions to the 250.98 FTEs in the final MEO. In a supplemental protest, JCWSI refines its argument in this regard, identifying approximately 36 FTEs which it claims were improperly eliminated without explanation from the initial 379 FTEs. According to JCWSI, these inconsistencies had a domino effect throughout the process, resulting in a "heap of spaghetti, all winding back on itself, inconsistent and irreconcilably twisted, which cannot withstand scrutiny." Protester's Comments, Oct. 5, 2001, at 39. JCWSI maintains that these uncertainties show not only that the Army's "top-down" approach to developing the MEO was flawed from the beginning, but that the agency did not follow the procedures for conducting a cost comparison prescribed by Circular A-76 and the RSH.

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<sup>7</sup> The protester argues that the AAB improperly considered the MEO team's explanations, and complains that JCWSI was excluded from participating in the appeals process. According to the protester, the fact that the AAB requested additional information leads to a conclusion the management plan did not adequately support the cost comparison. We disagree. The extent of, or limits on, participation by the various sides in the agency appeal process is not a matter for review by our Office. Moreover, we see nothing wrong with the AAB requesting further explanations to assist in reaching its decision, and the fact that the request was made does not compel a conclusion that the management plan was inadequate to support the cost comparison.

<sup>8</sup> The record shows that the 379 FTE figure was based on staffing data the MEO team provided to MAI during the course of the study.

In order to better understand the record, our Office conducted a hearing at which we heard testimony from the program manager (PM), who had a pivotal role as a member of the MEO team. That testimony, which we found fully credible, was useful to our Office in explaining the factual background of the MEO plan. At the hearing, the PM consistently testified that the MEO staffing was based primarily on historical workload data and the PWS requirements. Hearing Transcript (Tr.) at 76-79, 168-70, and 179-80. This approach is confirmed by the Fort Jackson Garrison Commander. In a letter responding to the AAB's request for additional information, the Commander explained that "in developing the Fort Jackson MEO, MAI and local personnel tried to determine the minimal staffing necessary to accomplish the mission. Great care was taken to identify the staffing necessary to provide what was required by the PWS, not what has been provided in the past." AR exh. N1, Garrison Commander Memo. for AAB, Apr. 23, 2001, ¶ 2. The record is thus clear that while the management study does reference 379 FTEs at the beginning of MAI's work, that figure is largely irrelevant, as the record shows that the MEO team ultimately staffed the in-house plan based on the historical workload data and the PWS requirements.<sup>9</sup>

The key question for our Office here is the reasonableness of the certification by the USAAA, in its capacity as the IRO, that the MEO satisfied the PWS requirements. With the exception of the specific, relatively limited challenges that we find nonmeritorious for the reasons explained below, the protester has provided us no basis to question the reasonableness of the USAAA's certification. Moreover, the record shows that the in-house cost estimate included the costs for all of the FTEs included in the MEO. Indeed, JCWSI concedes this point, stating that "it appears that the Army's in-house cost estimate does price out the number of FTEs included in the Army's MEO (i.e., 250.98 FTEs)," and "the Army's in-house cost estimate does appear to price the FTEs that are reflected in the Army's final MEO." Protester's Comments, Oct. 5, 2001 at 45-46, and 72.

In our view, the management plan clearly explains and documents the assumptions MAI and the MEO team made in developing the in-house plan for the final MEO. In doing so, both MAI and the MEO team provided an overall comparison of Fort Jackson's organization with the proposed MEO, and explained initiatives and assumptions made in reaching their recommendations. JCWSI recognizes that the RSH's reference to the "current organization" is intended merely as a "realism check and balance to ensure that the agency does not construct an MEO that is wholly unreasonable" or so vastly different from the existing organizational structure as to

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<sup>9</sup> The protester's contention that the agency used a "top-down" method thus, in our view, misses the mark, since the initial 379 FTEs referenced in the management study was nothing more than a snapshot of the labor force MAI used to describe Fort Jackson's operations at the beginning of its work, and it did not determine the efficiencies, reorganizations, or staff reductions proposed.

call into question the MEO's ability to perform the work required by the PWS. Protester's Comments, Oct. 5, 2001, at 22. Here, MAI recognized that Fort Jackson was in the process of a major reorganization and took that into account in making its recommendations, and the MEO team adjusted those recommendations to develop the final MEO. In our view, the management plan provides a sufficient description of Fort Jackson's operations to reasonably permit a "realism check" of the MEO. Contrary to JCWSI's assertions, neither the Circular nor the RSH requires more.

In addition to the lack of a legal requirement for the detailed comparison JCWSI seeks, we believe that JCWSI's approach would unjustifiably require agencies to focus on tracking intervening staffing level changes, rather than focusing on building an MEO that satisfies the PWS requirements. Changes occurring during the course of a study (such as the reorganization that occurred here) can affect the size of the labor force, for reasons unrelated to study recommendations. Given the length of time generally required to complete an A-76 study, such changes may be inevitable. See DOD Competitive Sourcing: Results of Recent Competitions. (GAO/NSIAD-99-44, Feb. 23, 1999) (summarizing the length of time various DOD agencies required to complete a study). Here, for example, the study was announced in 1997, MAI actually began its work with respect to Fort Jackson in 1999, and the management study was completed in March 2000. Under JCWSI's theory, TRADOC, and any agency conducting a study pursuant to Circular A-76, would be expected to stop the study each time a significant event occurs in order to determine whether it has the most current staffing data available. That effort would distract from what we view as the central concern, which is constructing an in-house plan adequate to meet the PWS requirements.

The protester also argues that TRADOC ignored JCWSI's superior performance as evidenced by the fact that it proposed more total hours than the MEO. This argument is without merit. The RFP clearly announced that the agency would select the lowest-priced, technically acceptable proposal for the cost comparison. Thus, TRADOC was not required to assess or rank proposals based on "technical superiority," nor was it required to go through the "leveling" process as must be done where the solicitation calls for a comparative technical evaluation. See, e.g., BAE Sys., supra. In addition, the protester maintains that the fact that it offered substantially more hours supports its assertion that the MEO did not explain the overall reductions in staffing. In our view, this assertion, without more, does not call into question the reasonableness of the in-house plan or of the IRO's certification that the in-house plan is adequate to meet the PWS requirements.

#### B. Specific Errors Alleged in the Cost Comparison

We now turn to the protester's allegations concerning specific errors in the in-house cost estimate. In this regard, the protester argues that the agency overestimates cost savings from eliminating unproductive travel. JCWSI also argues that functions required by the PWS are either not included in the in-house cost estimate or were

eliminated altogether from the MEO. These functions are related to material management, moving and shipping, clothing initial issue point, electrical equipment repair, and the hazardous material manager. We address each of these contentions separately below.

## 1. Unproductive Travel

The MEO team decided to eliminate unproductive travel to and from job sites for lunch and one of two authorized daily breaks. The MEO team calculated the savings associated with eliminating the unproductive travel time as .75 hour (45 minutes) for each work day (222 days), per employee, and it assumed that 75 percent of the 56 employees (42 individuals) would be affected by enforcing this policy. Based on these assumptions, the MEO team calculated that 6,993 hours (or approximately 4 FTEs) could be eliminated from its staffing. AR exh. T at 8.<sup>10</sup>

JCWSI argues that the MEO overstates the savings associated with eliminating the unproductive travel time. Essentially, the protester is contesting the factual basis of the finding that there is unproductive travel time associated with the break and lunch, as well as the assumption that the MEO team will be able to reduce the amount of unproductive time as much as promised. The protester's objection centers around the agency's assumption that 75 percent of all affected employees always travel to and from their job sites for breaks and lunch. JCWSI points out that MAI's observation was quite different: it found that employees stopped working before the end of the day in order to return to their shop to complete paperwork.<sup>11</sup> As such, the protester asserts that there is no evidence in the record to support the notion that all employees were traveling to and from their job sites for breaks and lunch, or that 75 percent of all affected employees were doing so all of the time—i.e., on all of the 222 work days of the year. The protester argues that, even assuming that the record contains some evidence of unproductive travel, the MEO

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<sup>10</sup> Although there seems to be some inconsistency in the record as to whether the anticipated savings amount to 1 hour or 45 minutes, the PM's testimony at the hearing indicated that the MEO team based its calculations on eliminating 45 minutes of unproductive travel.

<sup>11</sup> MAI reported that it had observed that cyclic maintenance employees returned to the shops a half-hour before the end of the work day to complete paperwork and handle other administrative tasks. AR exh. M, MS, ch. 3, at 3-10, 3-11. MAI viewed this practice as inefficient, leading MAI to recommend "to hold employees to the standard 30 minutes break per day and 30 minute lunch per day." AR exh. M, ¶ 3.3.4, at 3-11. (The MEO team's proposal regarding travel at the morning break and lunch apparently grew out of this recommendation.) MAI explained that the result of enforcing existing break and travel policies "is a considerable increase in the amount of hours available for productive work." AR exh. M, TE 4001-1.

unreasonably extrapolates observed behavior from a relatively small number of employees to 56 employees potentially affected by the policy.

With respect to this issue, the PM testified that based on his personal experience and observations during his 20-year tenure at Fort Jackson, all of the service personnel who leave the shop to perform service work return to the shop for their breaks and for lunch. Tr. at 79-81. We view this as a factual matter as to which the PM was a credible witness. As a result of MAI's observations, and his own personal experience, the PM further testified that the MEO team determined that it could improve productivity by eliminating the unproductive travel time by requiring that employees take their morning breaks and lunch on the job site. Id. at 79. The PM further explained that the percentage (75) of employees that could be affected by this policy was a conservative estimate, because virtually all employees return to the shop for breaks and lunch. Id. at 80. He also explained that using these conservative estimates provided sufficient flexibility to ensure that the in-house plan could perform all of the work required by the PWS with its proposed staffing levels.

JCWSI points out that on cross-examination on this issue, the PM testified that rather than 75 percent of employees currently abiding by the policy, in practice, it is conceivable that, at this point, only 50 percent of employees actually have changed their behavior to conform to the policy. Tr. at 121-22. The PM went on to emphasize, however, that transition to the MEO is not yet complete. Id. at 122.

It is not our Office's role to determine the appropriate staffing levels for either the in-house team or the private-sector offeror. Instead, our role is to determine whether there was a reasonable basis for the agency's determinations in this regard. Here, the protester has questioned whether there was a factual basis for one specific aspect of the in-house plan, and we heard testimony that, in our view, provides an adequate factual basis responding to the protester's concern. Whether the agency has already implemented this aspect of the in-house plan, or whether it fully implements that approach once the MEO is implemented, is a matter outside the scope of our bid protest jurisdiction, akin to a contract administration matter that we do not review. See 4 C.F.R. § 21.5(a) (2001).

## 2. Clothing Initial Issue Point (CIIP)

The CIIP provides clothing to new soldiers and includes a variety of related functions such as fitting, altering uniforms, and warehouse operations. JCWSI contends that the MEO team improperly eliminated two positions within this section based on an erroneous assumption. In this connection, the record shows that before recommending any staff reductions, MAI assumed that the CIIP section consisted of 43 FTEs, in addition to some 91,000 intermittent hours. The agency explains, however, that MAI misinterpreted the staffing data the MEO team provided, and incorrectly concluded that the intermittent hours were in addition to the 43 FTEs identified within the CIIP. Based on the data the MEO team provided, MAI then

recommended eliminating three FTEs related to CIIP operations—one fabric worker position within the alterations unit; and one motor vehicle operator position and one materiel handler position, both within the warehouse unit. The MEO team adopted MAI's recommendation, but only with respect to eliminating one fabric worker position and one materiel handler position in the final MEO.

The protester objects that the Army cannot, on the one hand, maintain that MAI based its recommendations on an erroneous interpretation of the staffing data, and also adopt MAI's recommendation with respect to eliminating two FTEs. In the protester's view, since MAI's recommendations were based on its erroneous interpretation of the total staff required to perform the CIIP functions, the MEO is understaffed by the two FTEs the MEO team eliminated.

During the hearing, the PM testified that upon review of MAI's recommended MEO, he realized that MAI had incorrectly included 91,000 hours for intermittent work and he corrected that error. Tr. at 94, 136-37, 140. The PM further explained that the MEO team staffed the CIIP section by analyzing the actual reported hours of each individual in that section, including whether each individual performing CIIP functions was a permanent or intermittent employee. As a result of that analysis, the PM testified that he was then able to develop the staffing required for the CIIP function. Tr. at 94. Thus, the hearing testimony clarified the factual background and established, in our view, that there is no basis for the protester's allegation regarding the impact of MAI's misunderstanding of the staffing hours.<sup>12</sup>

### 3. Moving and Shipping

The PWS called for various tasks to be performed in connection with transporting materials, including loading and unloading of vehicles, packing, wrapping, and labeling items, preparing documentation, moving vehicles to and from storage areas, and performing and documenting safety checks, to name a few. AR exh. J, PWS ¶ 5.10.3.12. The protester maintains that the MEO did not identify any staff positions to perform these tasks. JCWSI contends that this failure is particularly significant because during discussions with the firm, TRADOC criticized JCWSI's proposed hours to perform the moving and shipping tasks described in the PWS. Based on the

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<sup>12</sup> JCWSI also argued in its protest that the MEO team adopted MAI's recommendation to reduce the number of overtime hours in clothing alterations from its historical figure of 3,215 hours to zero, without justification. The record shows that the MEO team did not adopt MAI's recommendation in this regard, and actually included more than 6,000 overtime hours in the CIIP section to meet surges in demand during peak periods. AR exh. M, ch. 5 at 5-5. These hours are accounted for in the cost comparison. AR exh. P; AR exh. L, Base Year Personnel Costs Worksheets. In its comments, JCWSI essentially concedes that the Army's explanation resolves this basis of protest. Comments, Oct. 5, 2001, at 77.

agency's estimate that historically the Army required 14,112 hours to perform these tasks, JCWSI states that it included [DELETED] FTEs in its proposal to perform these functions, and that these FTEs should be added into the MEO.<sup>13</sup>

In response to the AAB's request for additional information on this issue, the MEO team explained that, consistent with the PWS, the responsibilities for performing the various tasks related to moving and shipping are scattered throughout the MEO. AR exh. N1.I-C-3 at 98. In its response, the MEO team explained that 14.5 FTEs included within different areas of the MEO would be responsible for performing moving and shipping tasks. The AAB concurred, finding that the MEO provided 14.5 FTEs dedicated to performing the moving and shipping tasks, which the board considered a "full complement" of positions to accomplish the required tasks and denied this issue. AR exh. Q, AAB Decision, I-C-3, at 1.

The agency explains that the PWS requirements related to moving and shipping are actually distributed among more than the 14.5 FTEs previously identified to the AAB. In this connection, the agency has provided a table describing specific responsibilities, locations, and the number of FTEs included in the MEO for each position responsible for some aspect of moving and shipping. AR exh. T at 12-15. Our review of the record further shows that the job descriptions for all of the positions described show that, in fact, their responsibilities include work described in the PWS under the moving and shipping area. We conclude that the agency is reasonable in contending that, when all of these positions are considered, the MEO proposed 45.5 FTEs whose duty descriptions include various aspects of moving and shipping tasks. Especially in light of the protester's proposing [DELETED] FTEs to perform these functions, we have no basis to disagree with the AAB's conclusion that the MEO provided sufficient staff to meet the PWS requirements in this area.<sup>14</sup>

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<sup>13</sup> The RSH requires that regular hours be converted at the rate of 1,776 hours/FTE. RSH, Part II, ch. 2, ¶ B.5. Applying that formula, JCWSI divided [DELETED] regular hours by 1,776, to yield [DELETED] FTEs.

<sup>14</sup> Although the agency concedes that the MEO team failed to specify which positions will perform the moving and shipping tasks, the job descriptions provided reasonably establish which positions are responsible for performing these requirements. This situation is thus distinguishable from one where an agency claims that the MEO includes sufficient FTEs to absorb work called for by the PWS, but neither the management plan nor the in-house cost estimate supports that assumption. See, e.g., Trajen, Inc., *supra*, at 4.

#### 4. Electrical Equipment Repair

JCWSI maintains the MEO fails to provide adequate staffing to perform the electrical equipment repair functions of the PWS. In this connection, the protester states that TRADOC had criticized JCWSI's proposed hours for this function, and indicated that the function required a minimum of 24,509 hours, or 13.8 FTEs. The protester maintains, however, that the MEO does not provide sufficient FTEs for this function.

TRADOC states that the MEO included a total of 17 FTEs for the electrical equipment repair work, or the equivalent of 30,192 hours, and the agency included those costs in the in-house cost estimate. AR exh. P, Line 1, Base Personnel Cost Worksheet. While the protester does not challenge the agency's statement in this regard, JCWSI notes that TRADOC states that it included the equivalent of 2 FTEs to perform some radio work by contract, but argues that these contract costs are not included in the Army's in-house estimate.<sup>15</sup>

At the hearing, the PM testified that the MEO team determined that it would be more cost effective to have some of the radio repair work previously done in-house, performed by contract. Tr. at 98-99. The PM further explained that the MEO estimated these contract costs at approximately \$36,000 per year. Tr. 100; AR exh. L, Original Cost Comparison Form, Line 3, Other Specifically Attributable Costs, Summary Worksheet. The PM further testified that these costs are captured in the initial cost estimate of in-house performance, specifically under "Other Specifically Attributable Costs." AR exh. L, Original Cost Comparison Form, Line 3 (Nov. 17, 2000).

The protester complains, however, that while the final Cost Comparison Form (i.e., the form completed after the AAB's decision on JCWSI's appeal) includes \$112,696 for the first year, and higher amounts in subsequent years, for a total of \$580,322 under the "Other Specifically Attributable Costs" category, the record does not contain any backup documentation explaining how these costs were calculated.

The protester's contention is factually unsupported by the record. While the protester is technically correct in its assertion regarding the final cost comparison form, it is not accurate to characterize the record as lacking any explanation as to "how those costs were calculated, or what accounts for those costs," as JCWSI contends. Post-Hearing Comments, Oct. 29, 2001, at 21. As already explained, the

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<sup>15</sup> Although the PM's statement in response to JCWSI's contentions regarding this issue indicates that the MEO team "also included the equivalent of 2 FTEs to accomplish other electrical repair (radio) electrical on a contract basis," PM Statement, at 17, the record is clear that the MEO was staffed, and costed, 17 FTEs to perform the electrical work in-house, and the additional costs of radio repair work were reflected as "Other Specifically Attributable Costs."



record contains the MEO team's contemporaneous calculations of how it arrived at the estimates for performing the radio repair work by contract. Those estimates were based on the anticipated number of weekly repairs and average costs for each occurrence, for approximately \$36,000 per year. AR exh. L, Original Cost Comparison Form, Radio Repair Contract. The record shows that the MEO team estimated one contract for radio repair work at \$25,000 per year, while a second contract for similar work was estimated at approximately \$9,375 per year. AR exh. L, Radio Repair Contract Worksheet. The protester offers no basis to question the reasonableness of these amounts. The total amount included in that initial cost comparison form for the "Other Specifically Attributable Costs," including the estimated contract electrical repair work, is more than \$569,000. *Id.* The record further shows that following implementation of the AAB's decision, the estimated amount included for these costs increased by approximately \$10,000, to more than \$580,000. The AAB did not question the agency's original estimates for performing the radio repair work by contract; the increase can thus be presumed to be attributable to items unrelated to the radio repair work, and there is no reason to believe that TRADOC's original supporting calculations for performing the radio repair work by contract did not support the estimates for this work included in the revised cost comparison. There is thus no factual support for the protester's assertion that the record does not contain backup documentation explaining how these costs were calculated.

##### 5. Hazardous Material Manager

The PWS required the contractor to comply with all applicable environmental, fire, safety, and transportation regulations controlling the proper handling and storage of hazardous materials (HM). AR exh. J, PWS ¶ 1.4.5.1. In order to carry out the functions associated with this requirement, the PWS called for an HM Manager. According to the protester, the MEO does not provide this required position. JCWSI also argues that the HM manager identified in the MEO is not costed as a manager-level position, and should be costed at a higher level.

TRADOC states that to meet the PWS requirement at issue, the MEO included a HM Program Coordinator at a General Schedule (GS)-9 level. The MEO reflects a cost of \$52,055.94 for this position. *See* AR exh. P, Base Year Personnel Costs, Line 26 (HAZ MAT PGM COORD). Thus, the protester's assertion that the MEO does not include costs for the HM Manager position is not supported by the record.

The agency further explains that prior to Fort Jackson's reorganization this position was staffed at the GS-7 level. TRADOC states that the predecessor position performed the tasks described in the PWS, and continues to perform those same tasks even after the reorganization at Fort Jackson. The agency further explains that notwithstanding the title, the HM "Manager" does not involve managing or supervising personnel, as JCWSI maintains. Based on the agency's explanation, and

our independent review of the record, the protester's insistence that the HM Manager position was required to be compensated at a higher pay level, is not supportable.

#### IV. SUPPLEMENTAL ISSUE

In its comments on the agency report, JCWSI asserts that TRADOC rejected MAI's findings and recommendations "when they felt the need to find more FTEs to eliminate." Protester's Comments, Oct. 5, 2001, at 32. In support of this assertion, JCWSI provided an attachment, entitled "Table of Challenged Positions In DOL," where it lists various positions the protester claims TRADOC improperly reclassified as GIN functions. *Id.* exh. 1. The protester also attached this table to a supplemental protest submission. A review of that table shows that JCWSI primarily relies on TE-2001, a technical exhibit included in the management study, as a basis for its argument concerning the allegedly reclassified positions.

With respect to challenges to cost comparisons under Circular A-76 procedures, we have adopted a policy, for the sake of comity and efficiency, of requiring protesters to exhaust the available administrative appeal process. Thus, we have held that where, as here, there is a relatively speedy appeal process for the review of an agency's cost comparison decision, we will not consider objections to the cost comparison that were not appealed to the agency. See Professional Servs. Unified, Inc., B-257360.2, July 21, 1994, 94-2 CPD ¶ 39 at 3; Direct Delivery Sys., B-198361, May 16, 1980, 80-1 CPD ¶ 343 at 2. Nevertheless, there is no statutory or regulatory requirement that an offeror exhaust available agency-level remedies before protesting to our Office, and we retain the discretion to waive the policy requiring the exhaustion of the Circular A-76 appeals process where good cause is shown. BAE Sys., *supra*, at 17. Here, it is clear that the protester had sufficient information to have raised this basis for challenging the cost comparison after it reviewed the management study, which TRADOC made available to JCWSI during the public review period following the cost comparison, and there is nothing in the record that would warrant waiving our policy requiring exhaustion of the appeals process.

The protest is denied.

Anthony H. Gamboa  
General Counsel